Wisconsin State Fire Chiefs' Association, Inc.

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DATE: March 8, 2007

TO: Committee on Corrections and Courts

FROM: Wisconsin State Fire Chiefs Association

RE: Assembly Bill 57

The Wisconsin State Fire Chiefs Association representing 862 fire departments with over 900 chief officers opposes Assembly Bill 57. I received a call yesterday from Larry Plummer president of the Wisconsin State Firefighters Association representing over 11,000 firefighters who asked that I let the committee know that they oppose Assembly Bill 57 also.

Police & Fire Commissions in each community across the State of Wisconsin are comprised of residents of that local community. Each community develops rules and regulations that set the standard by which the members of their public safety units must conduct themselves. When disciplinary action is taken by a police or fire chief the Police & Fire Commission reviews the information and administers the appropriate discipline to the public safety officer using the standards that have been set by that community. That public safety officer currently has the right to appeal the decision of the Police & Fire Commission to the circuit court, if they are not satisfied with the process or the disciplinary action taken by the Commission. Assembly Bill 57 would allow the public safety officer the option of by-passing the Police & Fire Commission process and choose an arbitrator, who has no ties to the local community, to review the information and decide on the disciplinary action. This option will hinder the ability of the local community to establish and maintain the standard to which they desire the public safety officers of their community to perform.

The Wisconsin State Fire Chiefs Association feels that the current process of a Police & Fire Commission review and the ability of the officer to appeal the Police & Fire Commission disciplinary decision in circuit court is a fair and equitable system. The Wisconsin State Fire Chiefs Association strongly opposes Assembly Bill 57 and asks that the committee members oppose this legislation also.

If you have any questions you may contact David Bloom, Legislative Liaison at 608-444-3324. Thank you for the opportunity to express our opposition to this legislation.

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THE WISCONSIN PROFESSIONAL POLICE ASSOCIATION

March 8, 2007

The Honorable Garey Bies, Chair
Assembly Committee on Corrections and Courts
Room 125 West
State Capitol
P.O. Box 8952
Madison, WI 53708-8952

RE: Statement to be Distributed to Committee Members for the March 8, 2007 Hearing on 2007 Assembly Bill 57

Mr. Chairman and Distinguished Members of the Committee:

Wisconsin's largest law enforcement group, the WPPA genuinely appreciates this opportunity to offer our enthusiastic SUPPORT of Assembly Bill 57, relating to the disciplinary procedures for certain local law enforcement officers and fire fighters. This brief statement will summarize the WPPA's perspective of AB 57, and will further specifically address some of the critical points raised by those groups that oppose this measure.

Today, if a city, village, or town public safety officer wants to appeal the disciplinary decision of a police and fire commission (PFC), their only option to do so is through circuit court. This process is costly and time-consuming for both the officer and their municipal employer. If enacted into law, AB 57 would allow this officer to appeal their discipline to an arbitrator, rather than to circuit court, if the employer agreed to it in the contract with its officers. If an officer appeals their discipline to arbitration, they forego the option to appeal to circuit court, and vice versa. This bill would not add another step in the appeals of PFC decisions.

This legislation would not diminish the authority of PFCs to render discipline as those decisions can already be the subject of circuit court review. This legislation would not render PFCs meaningless by requiring a brand new hearing, or *de novo* trial, on disciplinary matters. The scope of an arbitration proceeding under this bill would also be subject to the terms of the applicable collective bargaining agreement, as it currently is for other local public employee groups. In fact, every other local public employee group in this state can already negotiate with their employers for the right to arbitrate their discipline. This includes deputy sheriffs. This disparity is unfair and makes no sense. The dedicated men and women who provide public safety services in Wisconsin ought to be treated equally. Furthermore, for as long as every other class of local public employees has enjoyed this right, not a single legislative measure has been introduced to

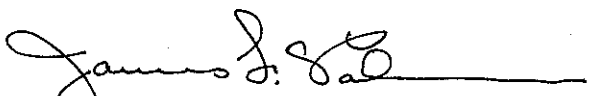
curtail it. This fact alone should speak volumes about the effectiveness and efficiency of the arbitration of discipline process.

AB 57 is not an unfunded mandate. While the arbitration process is less costly and more timely than a circuit court appeal, the municipal employer would not have to agree to this option if it didn't want to. That aside, the interest groups representing Wisconsin's municipalities have argued that they need more flexibility when bargaining with their employees. Given that a local police union would likely have to give something up in the bargaining process in order to obtain the right to arbitrate their discipline, AB 57 would seem to make good sense. This bill would improve and hasten the disciplinary process, would allow municipalities more flexibility at the bargaining table, and would likely save public employers, police officers and taxpayers money.

This Committee and the State Assembly approved this precise legislation in 2005, the Senate approved it in 2001, and the WPPA respectfully requests that this Committee approve it again as soon as is possible. On behalf of the nearly 11,000 WPPA members who help make Wisconsin a safe place to live, work, and raise a family, I thank you for your time and your consideration.

Respectfully,

THE WISCONSIN PROFESSIONAL POLICE ASSOCIATION



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LEGISLATIVE TESTIMONY RE 2007 AB 57

Good morning Representative Bies and members of this Committee. I am Gordon McQuillen, and I retired on December 31, 2006, as the Director of Legal Services for the Wisconsin Professional Police Association, headquartered here in Madison. I appear before you today as a private attorney to speak in favor of the passage of 2007 **Assembly Bill 57**. Lest there be any doubt, however, let me emphasize that I still represent law enforcement officers in discipline matters.

This measure – or others very similar to it – has been before the Legislature before. Indeed, this specific legislation has been approved by both houses, just not in the same session. The time has come to pass the substance of this bill definitively, and see it enacted into law.

As many of you know, the WPPA represents nearly 10,000 employees in counties, cities, villages and towns across this state who are employed in more than 300 municipalities. Most of you also are probably aware that law enforcement officers frequently face discipline owing in large measure to the nature of their calling: because of the unique place they hold in our communities, officers are held to higher standards of conduct than are other municipal employees, hence their conduct is subject to greater scrutiny than perhaps any other municipal employees – or even elected or appointed officials of their employers.

When this Legislature created Wisconsin Statutes Section 62.13, in the early years of the last century, the new law gave officers who were accused of wrongdoing the highest degree of due process protection in their employment among all public employees in the state. The statute assured

that law enforcement officers would be given a hearing before a presumptively independent board of police and fire commissioners prior to their employment being adversely affected by their employing municipality. Police and fire commissioners were to be appointed by mayors to staggered five year terms. The statute further required that no more than three members of those PFC's were to be from the same political party.

For many years, those statutory protections were fairly effective and acted as a check against the possibility of unfounded charges being filed against officers by their chiefs or members of the public, helping to remove politics from the disciplinary process – or at least creating a more equitably balanced political atmosphere in which to assess officers' conduct. There are, however, a number of cases in the law reporting the spotty success of the law. In the limited appeal provided by the statute, some discipline was overturned by the courts, some was sustained, and some was modified.

But times have changed. Most people in Wisconsin no longer belong to political parties, as such, despite their plain but undeclared affinity to the electoral politics of one party or another. Consequently, one significant check that was put into place in the legislation of long ago has become unhinged and mayors can bend – and most assuredly have bent – PFC's to their political goals.

In some cases that we have dealt with recently, members of PFC's have been coerced into resigning, thereby leaving vacancies which mayors have filled with appointees who were aligned politically with those mayors and against the interests of law enforcement officers. The results have been disastrous for some officers – and some who have been most seriously affected have been chiefs of police, who also are subject to the jurisdiction of PFC's.

In addition to this supposedly neutral civilian review, officers also have the right to have adverse decisions of PFC's reviewed by circuit courts. At the time that the statute was enacted, that review was absolutely the highest degree of protection against unwarranted discipline available to any public employee. However, the statute provided – and still provides – that the review by the circuit court is final – there is no right to appeal those cases to the appellate courts in Wisconsin, except on a limited *certiorari* basis. In contrast to the 75 years that predated collective bargaining for municipal employees, today no other organized public employees in the state have the limited avenues for appealing their discipline than law enforcement officers now have, because every other class of organized employees has the right to negotiate arbitration of discipline as an alternative to suing their employers in court. Thus, whereas, as noted above, in the past law enforcement officers had the highest level of due process protection in their jobs among all municipal employees, today they have the very lowest level of review available when they believe that those rights have been adversely affected.

You and your colleagues will, of course, hear from chiefs of police and from representatives of PFC's as they weigh in on this bill. They all will severely oppose this legislation. But, they will do so, not from a position of fairness and balance in the entire disciplinary process, but from narrow interests that are not based, necessarily, in the public's interest. We think that it is extremely important for this Committee – and for all other legislators – to ask those who are opposed to this bill to explain their opposition in objective terms: why do you or those whom you represent oppose affording officers the same right to impartial review of any discipline imposed on them that presently is enjoyed by all other organized municipal employees in Wisconsin? Allow me to suggest what some of their responses are likely to be.

In my experience, chiefs of police uniformly regard the possibility of having their judgment subjected to review by an arbitrator as a challenge to their authority. You will hear undoubtedly from them that they need the authority that the law now provides because they need to maintain a tight ship within their para-military organizations. In all likelihood, though, they will pose their arguments from the perspective of the rights and powers of PFC's rather from their own perspective as law enforcement agency heads. When the standards of just cause that are now found in Wis. Stats. § 62.13 (5) (em) were enacted years ago, chiefs and PFC's made the same arguments that they make today to AB 57, yet there has been no demonstrated harm to the efficiency of law enforcement or to the interests of the public since that enactment.

But that power-centric argument by chiefs overlooks the merits of AB 57. The arguments of chiefs also ignore changes made in police work and the education and investment that officers make in their careers today. Chiefs need not fear arbitral review of their determinations, if they have done their own jobs of following the just cause standards in Wis. Stats. § 62.13 and have applied the principles underlying those standards. The accuracy of that assertion can be found by reviewing arbitration awards in sheriffs' department discipline cases over the past decades, because deputy sheriffs have had the right to negotiate for the arbitration of their discipline for many years.

The opposition of PFC's to this bill is another story. It is difficult even to begin to understand their opposition to arbitral review of their decisions in discipline cases, since those decisions already are subject to circuit court review. AB 57 provides that if a municipality and its organized police officers negotiate to make a PFC decision reviewable by an arbitrator, that review will be an alternate to existing court review, but not to both. In either instance, there will be a single line of review – PFC's decisions cannot avoid scrutiny.

In this light, this Legislature – and our courts at all levels – have encouraged alternative dispute resolution in virtually all sorts of civil litigation to conserve judicial resources. Presently, the WPPA represents two officers whose discipline is being reviewed in the circuit courts. Both reviews already have involved significant work by the courts in advance of the judge's obligation to review transcripts, read briefs, hear arguments, and render decisions. One such case had been in that position for more than a year as the court tried to find time to decide the case.

Within the past few years, courts have overturned at least four police officer terminations. In each instance, the termination was overturned because the PFC's simply had not followed the requirements of Wis. Stats. § 62.13. But, each of the reviewing courts had to learn an entirely new area of the law that has a body of experts waiting to serve – labor arbitrators – and an area that the courts in question were unlikely ever to face again because of the rarity of appeals of PFC decisions.

AB 77 will allow labor organizations representing police officers to negotiate with their employers to provide for arbitration of discipline using this body of trained arbitrators. Please note that nothing in the bill will compel employers to agree to such arbitration. Instead, municipal negotiators will weigh the pros and cons of any such arbitration during negotiations with the unions representing officers, just as they do with every other proposal made by labor organizations during bargaining. Certainly, local PFC's can provide input to the city's negotiators during those bargaining sessions. Moreover, this Committee should know that many city employers already have agreed with the labor organizations representing their police officer employees to submit disputes over discipline to arbitration: such provisions exist in a number of current collective bargaining agreements. All that is needed to permit those parties to proceed to the arbitration that they already have agreed to is the authority that will be afforded to them by the passage of this bill.

PFC's continue to object to this bill for several reasons, all of them flawed. First, they argue that arbitration will strip them of their oversight of police departments. However, any arbitration of discipline will occur only after a PFC has acted. Those actions already are subject to circuit court review, and arbitration provides an alternative route for that review, if the municipality agrees with the labor organization. Accordingly, that argument of PFC's rings hollow.

In addition, recent litigations cleared the way for PFC's to use hearing examiners to conduct evidentiary hearings instead of requiring that PFC itself to sit to hear the evidence presented by the parties. The use of hearing examiners was initiated by a PFC – perfectly willing to cede that part of its role to a third party – which the PFC, alone now can choose to do, without input from the public labor organizations. A hearing examiner has no oversight, other than the PFC itself.

Furthermore, PFC members are not required to have any knowledge or training in police work, yet sit in review of officers who are accused of having violated policies concerning police work. (Ironically, in at least one instance, a mayor appointed a convicted criminal – who could not have become a police officer because of that criminal conviction – as a member of a PFC.) Can you imagine having persons with no knowledge of medicine reviewing complaints about medical care? Persons with no knowledge of pharmacology reviewing the acts of pharmacists? Persons with no knowledge of the law sitting to review allegations of violations of the Supreme Court's Rules regarding the conduct of attorneys? Yet, that lack of knowledge is exactly what faces officers who are accused of wrongdoing in the areas where they can deprive persons of their liberty or life – their conduct is reviewed not by any of their peers, but by civilians who are not required to have any knowledge of the subject area.

Additionally, PFC's are permitted to adopt their own rules for conducting hearings and those rules are dramatically inconsistent statewide. Some PFC's have no procedural rules whatsoever. Recent decisions of PFC's that were overturned by courts have demonstrated the lack of expertise by those PFC's.

This bill will accomplish several things, none of which will adversely affect the powers and duties of either chiefs of police or PFC's. First, AB 57 will restore the opportunity for arbitral review that police officers enjoyed before a court decision in Janesville removed it some years ago – prior to that decision, many cases of police discipline had gone to arbitration without any demonstrated harm to the public. Second, AB 57 will put officers in cities on an equal rights footing with their deputy sheriff colleagues throughout the state, since the Supreme Court has concluded recently that deputies can have their discipline reviewed by arbitrators if the associations representing those deputy sheriffs have negotiated that option with their employing counties.

Third, AB 77 will begin to create a body of reported cases that PFC's can examine to begin to educate themselves about their roles. Presently, PFC's operate in a vacuum about what happens in other municipalities – despite the fact that the Wis. Stats § 62.13 provides that it was enacted for statewide application – because there is no way for PFC's or the advocates of the parties who appear before them to have access to any reported cases, with the rare exception of the City of Madison's PFC, which does publish its decisions. If arbitrators begin to review PFC's decisions, those decisions will be reported and can be reviewed by other PFC's.

Fourth, the bill will provide police officers with some input into who will sit in review of their discipline. Presently, officers have absolutely no input officially into who will be appointed to sit on PFC's. By contrast, the selection of an arbitrator in a discipline case will be a bilateral

action between the municipality and the labor organization representing affected officers, thus injecting an element of neutrality that presently does not exist in the law. As with circuit court judges, arbitrators will be selected on a representative basis, rather than through the unilateral powers of mayors to appoint PFC members with no public oversight whatsoever.

We urge you when considering AB 57 to recognize what it will and will not do. It will take nothing away from the authority of chiefs of police or PFC's, since their actions already are subject to review. It will, however, afford police officers equity with their deputy colleagues.

Thank you for the opportunity to speak about this important bill. I will be happy to answer any questions that you have.

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DOUGLAS H. PETTIT
Chief of Police

Testimony Assembly Bill 57 – Disciplinary Procedures for Police Officers/Fire Fighters

Assembly Committee on Courts and Corrections

March 8, 2007 – 9:30 a.m.

Good Morning. My name is Doug Pettit. Thank you for the opportunity to provide testimony this morning related to Assembly Bill 57. First let me take just a minute to provide you with a little background about myself. Perhaps it will provide you with some insight into why I have chosen to appear today and express the concern that the Wisconsin Chiefs of Police Association has with this particular Legislative Proposal.

I have served as a police officer for the past thirty two years with the Oregon Police Department. I have served as the Chief of Police for the past twenty two years. My tenure as a Police Chief is outside the norm for police chiefs nationally and within the state. I have had a long professional association with the Wisconsin Chiefs of Police Association. I'm a past President for the Association. I have served on the Wisconsin Chiefs of Police Association's Legislative Committee for the past 20 years serving as the Committee's Chairperson for the past 10 years.

Additionally, I'm a life member of the International Association of Chiefs of Police and serve on that Association's Executive Committee and Legislative Committee.

The Wisconsin Chiefs of Police Association is opposed to Assembly Bill 57. Our association has opposed similar proposed legislation each time that it has been brought before the legislature for consideration.

If this bill was to become law it would remove a statutory process which has existed for over one hundred years. This statutory process has permitted municipalities the ability to use a community standard when making decisions related to what is or what is not acceptable conduct for its police officers and fire fighters. When candidates are hired for the position of police officer with a police agency, they voluntarily swear to uphold the laws of the United States, the State of Wisconsin, and the municipality for which they serve. Additionally, they swear to abide by the Code of Ethics and the Code of Conduct of our profession. For the most part the men and women who serve our citizens and their communities do it with integrity, dedication to the job, and are above reproach. As with any profession, we have a few that slip through the cracks and fail their co-workers, departments, and communities who have put so much trust in them. Their misconduct rises to a level where additional counseling, training,

and warnings are no longer the proper remedy to protect the department and citizens who they swore to serve.

It is those times where we need a system in place that provides the Police Chief with appropriate options based on that community's standard to effectively deal with the bad police officer (that rouge officer) who should have never be allowed to wear the badge. This is exactly where the Police and Fire Commission System has served our communities well for over 100 years and has provided a system which restores the level of trust that we need from our citizens to effectively do our jobs. This bill throws out the process spelled out in State Statute 62.13 with the bath water.

I would like to point out a couple of examples where I feel a State Appointed Arbitrator would not have the same sense of what the community standard is when rendering a decision as a citizen board representing the community based on that standard. It is not their fault because they don't live in the community, and they are simply hired to render a decision. Upon making the decision, they leave the community and are not affected by or have to live with the decision that they have made regardless of how it might affect the community and the department.

My first hypothetical example is where a police chief discovers that a police officer during the course his/her employment has been untruthful during the course of his or her duties. After going

through the due process steps articulated in State Statute 62.13, the police chief files charges with the police commission to terminate the officer's employment. After holding a hearing where the officer, the police department, and Police Commission are represented by attorneys, the Police Commission sustains the charges, and the officer is discharged. Under the current system the officer and the union who represented him/her can appeal the Commission decision to Circuit Court who then reviews the process to determine if all of the proper procedures have been followed and there was fair representation. Under this proposed legislation the officer and union representation can appeal the decision to an arbitrator not just to have the arbitrator decide if proper procedures have been followed but to retry the entire disciplinary case and have all the evidence presented all over again, thus doubling the expense for disciplinary cases for municipalities throughout the state.

I have heard supporters of this proposed legislation stating the reason that this proposed process is fairer then the current system is because the officer may not have been able present their complete case at the Commission Hearing. My response to that is shame on the union representation of the officer. As I previously stated, all parties have legal representation. I would suspect if the officer was not able to get all of the information into the Police and Fire Commission Hearing that it was because he/she was poorly represented, and this will not be fixed under this proposal. I would

also suggest that the information was not permitted into the Commission Hearing because of the rules of evidence are in play during the course of the proceeding. A Police and Fire Commission hearing must follow proper rules of evidence the same as our Judicial System.

So to finish my first example allow me to suggest after the appeal that the State Arbitrator reverses the Police Commission ruling and returns the officer back to the police department. Can anyone answer the question now what? If the officer is dismissed for being untruthful and even if an arbitrator determines that being untruthful is not a sufficient reason to be terminated, the department is now in a no win situation. At that point the officer is damaged goods, and if a defense attorney discovers in a future case that the officer was disciplined for being untruthful, the officer's credibility comes into question on any future court case. If the court agrees with a defense argument that the officer has no standing in the court because of his/her untruthfulness, then what duties is a police chief to assign that officer where they will never have to testify in court. I don't believe that reasonable accommodations can be made.

I have personally heard of arbitrator's rulings that shocked the consensus of a community by putting officers back on the job for similar violations of work rules. It has been my experience that the other police officers in the department do not want bad officers

returning to the job because they feel that by virtue of association with the affected officer that they my be viewed differently by the public and tainted by that officer's action, and as I stated before, the other officers understand their obligations related to the Law Enforcement Code of Ethics and the Code of Conduct. Anytime a police officer does something wrong and that wrong doing is highlighted by the media it affects us all, and each time it erodes the public's trust a little more.

My second example would be a Police Chief uncovers a police officer using illegal drugs off duty, which is a violation of a state law that the police officer has sworn to uphold. An arbitrator puts the police officer back to work after we go through the entire process which I discussed earlier. We have now by virtue of that ruling included police officers into the same employee category as a waste water treatment plant operator for disciplinary procedures. A waste water treatment plant operator is not held to the same community standard as a police officer by society, by the media, or by the public in general, nor should they be. As soon as we have decided it is okay to allow police officers to violate the very laws that they have taken an oath to uphold, then we have lost something as a society. During the Jockos Drug Investigation case involving members of the Madison Fire Department, the case was presented by attorneys representing the various fire fighters that the offense was not a case for termination if the fire fighters did

not use the cocaine on the job. Every morning that I read the paper, I wonder how we got to this place in the discussion where people were debating if it is okay for fire fighters to use an illegal drug off duty just so long as they were not using it on duty. I thought to myself when did this happen, when did we make a consensus decision that Fire Fighters are no longer held to the higher standard of public trust. My fear is that this proposed legislation will start us down that slippery slope.

I would also suggest if we are ready and willing to decide that police officers and fire fighters should be treated the same as any other public employee for review of discipline and you are prepared to take away an effective tool from police and fire chiefs to address bad officers, then it is fair to hold police and fire chiefs feet to the fire when an officer does something that shocks the public and the media reports it differently and with much more enthusiasm than when other public employees do something wrong. I think we all know why police officers misdeeds make the headlines while other public employee's misdeeds go completely unreported. It is because the media recognizes that police officers do hold that public trust, and with that they should be held to a higher standard.

I have also heard it stated by supporters of this proposed legislation that this proposal will not affect current labor agreements because the provision to allow the option to appeal to an arbitrator vs.

circuit court must be added to the labor agreement and only if the municipality agrees can it make its way into the labor agreement. Nothing could be further from the truth. It is the opinion of many very competent labor attorneys in the state that this issue would be a mandatory subject to bargaining. When the municipal labor agreement is negotiated upon expiration, this means that this provision would be a mandatory subject of bargaining between the parties. So in essence a state arbitrator would be rendering a decision whether a provision should be added to the labor agreement allowing disciplinary decisions rendered by Police and Fire Commission to be appealed to another state arbitrator or even perhaps that same arbitrator in the future. This is the old preverbal the fox watching the hen house scenario and a loss for the municipality. If the union representatives truly believe that this legislative proposal would only lead to a permissive subject of bargaining, then they clearly would not object to this bill being amended to include clear language articulating that this is a permissive subject to bargaining.

Lastly, I would like to ask what is broke with the current process. I have always been of the mind set that if it is not broke don't try to fix it, this system is not broke.

One additional thing that I have heard is the process is too political. The Police and Fire Commission Members are appointed by local politicians, and virtue of that process the commission is

not a true independent community review body. Well let me suggest neither are State Arbitrators. They are selected by the WERC Governing Board which is appointed to their positions by politicians. No matter what the process or who appoints who, we can not take the human factor out of any disciplinary process. I'm here to dispel on overstatement that I have heard about the current Police and Fire Commission system which is that the Commission is a rubber stamp for the Police and Fire Chiefs. I know a large number of Police Chiefs who do not enjoy that type of relationship with their Commission, and as a matter of fact, in a lot of cases the opposite is true. If there is certain aspect of the current system which needs addressing, I would hope you have the foresight to form a special legislative committee to address those issues and not throw out a century old proven process.

I again want to thank you for the opportunity to speak with you today about this very important subject which is a very large concern of the Wisconsin Chiefs of Police Association membership throughout the state. I have spoken to many police chiefs throughout the state, and this proposed legislation is of paramount concern for them. The Wisconsin Police Chiefs Association welcomes the opportunity to work with sponsors of Assembly Bill 57 to find compromise in the best interest of the citizens of the state and the law enforcement community.

I encourage this committee to reject this proposed legislation and vote no to Assembly Bill 57.

I would be happy to answer any questions that the committee may have for me.

WISCONSIN ALLIANCE OF CITIES

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March 7, 2007

TO: The Honorable Members of the Committee on Corrections and Courts

FROM: Edward J. Huck, Executive Director

RE: AB 57, Retrial of Protective Employees

The Wisconsin Alliance of Cities vigorously opposes AB 57 because contract negotiations are not the place to deal with misconduct by law enforcement personnel at any level. Further, the legislature should insulate citizens from any effort by police unions to protect bad officers from discipline rendered by citizens from the community in which they were hired to serve.

Further, this bill creates an entirely new trial process that will be borne by innocent property tax payers and local governments trying to keep their good police.

While sheriffs derive their powers from the constitution and are elected, police chiefs and our officers are responsible to the public, not politicians or out-of-town arbitrators. Any political decision can be decided before arbitrator rules, but not if a police and fire commission is judging an alleged violation of the public's trust.

The "Seven Just Cause Standards" are designed to protect officers from arbitrary treatment by sheriffs and chiefs. There is no reason why an arbitrator should have to oversee a retrial of an officer, when the courts can judge whether the police and fire commission followed the law.

We believe this bill is not permissive because of "boiler plate" language that exists in our contracts. If the legislature wants to clarify this bill is, permissive language should be added to the bill.

We believe that criticisms of the police and fire commission process should be remedied and that the process should be expanded to include all gun-carrying servants of the public, either county or municipal. Thank you.

Please reject this legislation. Thank you.

March 8, 2007
Statement of Scott Herrick to the Assembly Committee on Corrections and the Courts
Re. Assembly Bill 57: *Opposing*

I am a lawyer in private practice, a former member and president of the Madison Board of Police and Fire Commissioners, and I have acted for several years as its special counsel. From time to time I have represented other PFC's around the state in disciplinary hearings, judicial review, and other litigation, including several cases recently decided by the Wisconsin Supreme Court. I appear today in my personal capacity, basing my comments on this experience.

Please do not be dismayed by the bulk of my submission; most of that material is reference copies of my testimony and comments from previous sessions. I will do my lawyer's best to be concise today.

Some of you know that I am a strong advocate for Wisconsin's century-old tradition of a state-wide system of open citizen accountability for public safety personnel. Rather than review and defend that tradition today in broad terms, I will attempt to focus on a peculiarity of this bill which has puzzled me every session since the proposal surfaced more than a decade ago, right after the legislature adopted the Law Enforcement Officers Bill of Rights, which inserted the "Seven Standards of Just Cause" into our statute and modified the judicial appeal process substantially. To explain that peculiarity I must briefly review the current PFC process, and then show how this bill would change it. I have prepared the attached simple flow charts to aid in this explanation - - I call them "roadmaps to PFC Discipline." They are attached immediately following these comments.

Map 1 shows the three basic components of the current PFC discipline system, with references to the pertinent statutory provisions: complaints, at WS 62.13(5)(a) through (c); the PFC hearing process, including the "just cause" standards and salary protection until the PFC finishes, at WS 62.13((d) through (h); and judicial review, at WS 62.13(5)(i), supplemented by "certiorari" review under Wisconsin non-statutory or "common" law. Note that judicial review or intervention is available not only on appeal from a disciplinary decision, shown at the right of Map 1, but also at the early stages, beginning even before a hearing is convened, as shown along the bottom of the map, under the first two components. I always welcome with enthusiasm any opportunity to explain, advocate, and defend this system, but I will not do so here.

Map 2 shows the change which AB 57 proposes to make from the current PFC discipline system. This is where the peculiarity comes in. At each previous hearing on this subject in earlier sessions, and on many other occasions, advocates of this change make their case by criticizing - - attacking, really - - the fairness, competence, consistency, and general uprightness of PFC's generally, or more

often of a particular unnamed PFC in a certain horror story some years ago, where something terrible happened. *But this bill does absolutely nothing about PFC's.* That focal point of all the criticism, those biased, untrained, unpredictable citizens, is left completely alone by the bill.

Instead of changing the part of the system that is alleged to be the problem, the bill provides an extra, alternative appeal route, AFTER the PFC. Mind you, in 1994 the existing appeal process was tailored uniquely to the PFC context, and nobody I know of has raised any serious complaints about the consistent unfairness of our circuit courts, Court of Appeals, or Supreme Court in these matters, but for some unstated reason that's where the change is proposed. In my roadmap, the change appears down at the lower right corner - - I have crudely circled it. Everything else on Map 2 is identical to Map 1.

The obvious practical effect of this new pathway is that we would have two trials - - first a PFC trial, and then, instead of a true appeal, a new trial in front of an arbitrator. A do-over, a mulligan. A check of my files shows me that the most recent serious PFC disciplinary cases I have been involved in accumulated respectively 2731 pages of transcript and 130 exhibits over 26 hearing sessions; 946 pages of transcript over 9 sessions; 2051 pages over 17 sessions; 700 pages over 5 sessions; and 1006 pages over 5 sessions. With the salary meter running the whole time, of course. Now we would have our same PFC hearing, followed by a duplicative arbitration hearing: 2 for the price of 2.

Remember that the bill deals only with the *statutory appeal* process - - the bill kicks in at WS 62.13(5)(i) only. Our state courts have long recognized a parallel right of judicial review by common-law "certiorari," which by definition picks up matters and issues not covered by 62.13(5)(i) - - and believe me, there are many such matters and issues - - and so "cert" will remain in place. So we will have two hearings instead of one - - PFC plus arbitration - - and also judicial review in certiorari - - not to mention the side-trips to federal court that come up from time to time. And of course creative lawyers will seek ways to take the arbitration decision to court.

Municipalities, chiefs, unions, PFC's, and courts will be grappling with this oddity for years. Be warned: in legal matters, Rube Goldberg devices can cost real money.

Many folks do not understand that PFC's as constituted for the past century represent neither the municipal employer nor the officer. PFC's are not parties to collective bargaining agreements. PFC's are no more perfect than any other piece of our checked-and-balanced democracy, but they provide an independent, quasi-judicial citizen tribunal for discipline and for citizen complaints, and an

independent public voice. Leaving police and fire discipline to be worked out at the bargaining table between municipal labor-relations staff and unions would take us back a century or more to very risky contamination of our professional protective service by local political give and take all over the state.

Is it now time to re-examine the fundamental relationships among Wisconsin citizens, municipalities, elected officials, and our protective service officers? If so, that task should be undertaken with the respect, care, and intellectual honesty that our police officers, firefighters, and citizens deserve, and that honors our progressive tradition. It should be done by a blue-ribbon task force of the finest people in police and fire uniforms, the best legal experts, and the most dedicated citizens we can find. A Joint Legislative Council Special Study Committee was formed several years ago to address legislative issues affecting PFC's, but unfortunately that committee never held its first working session. Perhaps the time has come for a more effective and comprehensive effort.

But I ask you, please: Beware the dangers and costs of simple and superficial fixes illustrated by AB 57. Wisconsin PFC's are a proven component of our civic life. Act only with care and caution. If you perceive a problem, be sure the solution fits, and be sure it doesn't make things worse. Don't tinker with the PFC statute.

Roadmaps to PFC Discipline: Wis. Stats. 62.13, Police and fire departments

Map 1: Present Law

uniform statewide (non-Milwaukee) process; non-bargainable

Complaint

(5)(a) - (c)

may be filed by "aggrieved person," or Chief, or commissioner, or commission

→

PFC Hearing

(5)(d) - (h)

convene within 30 days of complaint

"just cause" standards

→

Judicial Review

(5)(i), "Appeal"

just cause determined by circuit court judge

and

"Certiorari" (non-statutory)

legal issue not reached in "appeal"

→

non-statutory, "common law" judicial supervision and review:

prohibition, injunction, mandamus, certiorari

→ → → → →

Roadmaps to PFC Discipline: Wis. Stats. 62.13, Police and fire departments

Map 2: Proposed alternative appeal process (AB 57)

appeal process at WS 62.13(5)(i) would be subject to bargaining

Complaint

(5)(a) - (c)

may be filed by "aggrieved person," or Chief, or commissioner, or commission

→

PFC Hearing

(5)(d) - (h)

convene within 30 days of complaint
"just cause" standards

→

Review

disciplined officer chooses between present law and bargained arbitration clause

Choice One, current law:

(5)(i), "Appeal"
just cause determined by circuit court judge
and
"Certiorari" (non-statutory)
legal issues not reached in "appeal"

→

or

Choice Two, AB 57:

Arbitration in lieu of (5)(i);
judicial "certiorari" remains for non-(5)(i) matters

→

non-statutory, "common law" judicial supervision and review:

prohibition, injunction, mandamus, certiorari

_____ → _____ → _____ → _____ → _____ →

March 23 2005
Statement of Scott Herrick to the Assembly Committee on Corrections and the Courts
Re. Assembly Bill 185: *Opposing*

I am a lawyer in private practice and a former member and president of the Madison Board of Police and Fire Commissioners, and have acted for several years as its special counsel. From time to time I have represented other PFCs around the state, and I was a citizen member of the Joint Legislative Council Special Study Committee formed several years ago to address legislative issues affecting PFCs. I have frequently represented PFCs in judicial review and other litigation, including several cases recently decided by the Wisconsin Supreme Court. I appear today in my personal capacity, basing my comments on this experience.

Since the 1890s Wisconsin has had a state-wide system of open citizen accountability for public safety personnel. Rooted in classic civil service, good-government thinking from our progressive era, PFCs have had major responsibility for hiring, promotions, and serious discipline for more than a century. In my opinion our system has been a fundamental contributor to our state's enviable tradition of honest, effective, and humane government.

Under Wisconsin law, the PFC system has always been independent of collective bargaining. Our legislature and courts have never allowed municipalities to bargain away the basic structure provided by statute for police and fire discipline, either through arbitration provisions or otherwise.

In 1993 the Wisconsin Legislature adopted the most far-reaching amendments to our PFC statute in a century by adding the "Law Enforcement Officers Bill of Rights," including the so called "7 Standards of Just Cause," now WS 62.13(5)(em). This change in the law not only set new substantive and procedural standards for our PFCs, but also directed our circuit courts to apply the 7 Standards substantively again on appeal, at WS 62.13(5)(i). An early draft of the 1993 legislation had provided simply that local municipalities could bargain the PFC process, anticipating that the 7 Standards would gradually find their way into collective bargaining agreements. Instead of that piecemeal approach, the bill as enacted wisely went straight to the point and adopted the 7 Standards as the state-wide rule, for all PFCs and all appeals. The legal and practical effects of that legislation are still being worked out, in departments and PFCs across the state and in the courts.

In the light of this history and this experience AB 185 in my opinion has three crucial defects.

1. First, rather than change, amend, update, revise, reform, or improve the PFC system in any comprehensive way, it sets up an awkward and expensive local bypass which essentially duplicates or parallels the PFC process. The bill simply ignores the state-wide, standard procedure for hearings before the PFC, so that they continue as before, but then intervenes at the appeal level only, in an open-ended manner which leaves us completely uncertain as to what will be done in any given city or case. We would be left with a disjointed, potentially incoherent system.

   Presumably one of the results of this legislation would be that in some municipalities PFC decisions, reached after extensive and expensive hearing procedures during which the officer continues to receive full pay, would be followed by a start-over arbitration re-trial, making the PFC hearing a kind of dry-run or warm-up act for the real thing. A PFC hearing, followed by an arbitration hearing: 2 for the price of 2.

   The role of the PFC in the arbitration which would follow its decision is not specified. Under current law, PFCs defend their decisions in the judicial appeal; would PFCs prosecute the new arbitration appeals, or simply sit on the sidelines while the parties go again? Remember that PFCs are a tribunal to hear cases, not a party to the cases; and PFCs are not parties to the union contracts, so it would be up to each union and municipality to determine how the arbitration would be handled - - leaving the PFCs completely out of the picture.

   Remember also that the bill deals only with the *statutory appeal* process. Our state courts have long recognized a parallel right of judicial review by common-law "certiorari," which is not affected by this bill and will remain in place. So we will have two hearings instead of one, an appeal by arbitration, and review in certiorari - - not to mention the federal cases that come up from time to time. And of course creative lawyers will seek ways to take the arbitration decision to court. In legal matters, Rube Goldberg devices can cost real money to operate.

2. The bill abandons the ideal of state-wide uniformity of public safety discipline, replacing it with local appeal arrangements negotiated between municipalities and unions, which inevitably will vary from city to city. This abandonment in turn poses two further problems:

a. PFCs as constituted for the past century do not represent either the city or the employees; they are not parties to collective bargaining agreements. They provide an independent, quasi-judicial citizen tribunal for discipline and for citizen complaints, and an independent public voice. Leaving discipline to be worked out in bargaining between municipal labor-relations staff and unions would sacrifice this fundamental protection of the larger public interest.

b. Local bargaining will produce a variety of local solutions to a matter which has been identified explicitly for a century as one of state-wide concern. The bill puts no limits on the scope of the bargaining, so that we cannot predict what may be agreed upon. Hard-pressed municipalities may be tempted to trade off disciplinary arrangements for economic concessions, especially given the costs cities would face under the bill. For the first time we will have different disciplinary procedures for officers of different ranks, for police and fire officers (who work under separate contracts), for different communities. For the first time, the citizen complaint process will be different from the process for official discipline. PFCs are creatures of state law, not of local ordinance or contract, and our PFC process should be the same everywhere in the state, reflecting uniformly our values of due process, openness, civilian control, and judicial oversight, regardless of who is the complainant and who the respondent.

3. Finally and fundamentally, the bill does not solve a real problem. Appeals from PFC discipline are not broken. Police and fire officers are assured fair treatment in disciplinary matters under current statute and practice through a full range of appeal options, including statutory appeal, judicial review by common-law writ of *certiorari* - which the bill ignores -, and in some instances federal civil rights litigation.

I know that some of my friends in police and fire departments are discontent with the PFC discipline system. But AB 185 will not solve any of the problems we may have, while adding an entire new batch of its own. I ask you, please: Beware the dangers and costs of simple and superficial fixes. Wisconsin PFCs are a proven component of our civic life. Please DO NOT TINKER with the PFC statute.

SH/hs

February 24, 2004
Statement of Scott Herrick to the Senate Committee on Labor, Small Business Development and Consumer Affairs

Re. Senate Bill 48: *Opposing*

I am a lawyer in private practice and a former member and president of the Madison Board of Police and Fire Commissioners, and have acted for several years as its special counsel. From time to time I have represented other PFCs around the state, and I was a citizen member of the Joint Legislative Council Special Study Committee formed five years ago to address legislative issues affecting PFCs. I have frequently represented PFCs in judicial review and other litigation, including several cases recently decided by the Wisconsin Supreme Court. I appear today in my personal capacity, basing my comments on this experience.

Last July I testified in opposition to the Assembly companion bill, AB 128. I attach a copy of my follow-up letter to Rep. Nass after that hearing.

Since the 1890s Wisconsin has had a state-wide system of open citizen accountability for public safety personnel. Rooted in classic civil service, good-government thinking from our progressive era, PFCs have had major responsibility for hiring, promotions, and serious discipline for more than a century. In my opinion our system has been a fundamental contributor to our state's enviable tradition of honest, effective, and humane government.

Under Wisconsin law, the PFC system has always been independent of collective bargaining. Our legislature and courts have never allowed municipalities to bargain away the basic structure provided by statute for police and fire discipline, either through arbitration provisions or otherwise.

In 1993 the Wisconsin Legislature adopted the most far-reaching amendments to our PFC statute in a century by adding the "Law Enforcement Officers Bill of Rights," including the so called "7 Standards of Just Cause," now WS 62.13(5)(em). This change in the law not only set new substantive and procedural standards for our PFCs, but also directed our circuit courts to apply the 7 Standards substantively again on appeal, at WS 62.13(5)(i). An early draft of the 1993 legislation had provided simply that local municipalities could

bargain the PFC process, anticipating that the 7 Standards would gradually find their way into collective bargaining agreements. Instead of that piecemeal approach, the bill as enacted wisely went straight to the point and adopted the 7 Standards as the state-wide rule, for all PFCs and all appeals.

The legal and practical effects of that legislation are still being worked out, in departments and PFCs across the state and in the courts.

In the light of this history and this experience SB 48 in my opinion has three crucial defects.

1. The bill does not solve a real problem. Appeals from PFC discipline are not broken. Police and fire officers are assured fair treatment in disciplinary matters under current statute and practice through a full range of appeal options, including statutory appeal, judicial review by writ of *certiorari*, and in some instances federal civil rights litigation.

2. The bill does not change, amend, update, revise, reform, or improve the PFC system in any comprehensive way; instead, the bill provides for local bypass around it. The bill simply ignores the state-wide, standard procedure for hearings before the PFC, which will continue as before, but then interrupts at the appeal level only, in an open-ended manner which leaves us completely uncertain as to what will be done. We would be left with a disjointed, potentially incoherent system.

   Presumably one of the results of this legislation would be that in some municipalities PFC decisions, reached after extensive and expensive hearing procedures during which the officer continues to receive full pay, would be followed by a start-over arbitration re-trial, making the PFC hearing a kind of dry-run or warm-up act for the real thing. The role of the PFC in the arbitration which would follow its decision is not specified. Under current law, PFCs defend their decisions in the judicial appeal; would PFCs prosecute the new arbitration appeals, or simply sit on the sidelines while the parties go again? PFCs of course are not parties to the union contracts, so it would be up to each union and municipality to determine how the arbitration would be handled - - leaving the PFCs out of the picture.

3. The bill abandons the ideal of state-wide uniformity of public safety discipline, replacing it with local appeal arrangements negotiated between municipalities and unions, which inevitably will vary from city to city. This abandonment in turn poses two further problems:

   a. PFCs as constituted for the past century do not represent either the city or the employees; they are not parties to collective bargaining agreements. They provide an independent, quasi-judicial citizen tribunal for discipline and for citizen complaints, and an independent public voice. Leaving discipline to be worked out in bargaining between municipalities and unions alone would sacrifice this fundamental protection of the larger public interest.

   b. Local bargaining will produce a variety of local solutions to a matter which has been identified explicitly for a century as one of state-wide concern. The bill puts no limits on the scope of the bargaining, so that we cannot predict what may be agreed upon. Hard-pressed municipalities will be tempted to trade off disciplinary arrangements for economic concessions. For the first time we will have different disciplinary procedures for officers of different ranks, for police and fire officers (who work under separate contracts), for different communities. For the first time, the citizen complaint process will be different from the process for official discipline. PFCs are creatures of state law, not of local ordinance or contract, and our PFC process should be the same everywhere in the state, reflecting uniformly our values of due process, openness, civilian control, and judicial oversight, regardless of who is the complainant and who the respondent.

I know that some of my friends in police and fire departments are discontent with the PFC discipline system. As an attorney practicing in this area I can tell you that our courts are beginning to address the legal issues posed by the Law Enforcement Officers Bill of Rights, although important issues remain. But SB 48 will not solve any of the problems we have, while adding an entire new batch of its own. I ask you, please: Beware the dangers of simple and superficial fixes. Wisconsin PFCs are a proven component of our civic life. Please DO NOT TINKER with the PFC statute.

SH/hs

Herrick & Kasdorf, L.L.P.

Marsha R. Dymzarov
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July 11, 2003

Rep. Stephen L. Nass
State Capitol, 12 West
Box 8953
Madison WI 53708

FILE COPY

Re. AB 128: follow-up to public hearing

Dear. Rep. Nass

I deeply appreciated your committee's attentiveness, and patience, during the hearing on this bill earlier this week. I write to highlight two rather technical issues which were alluded to during the testimony but on which more complete exposition did not seem appropriate. I do not present a full legal analysis or argument here - - God forbid - - but merely make note for possible further inquiry.

Finality of appeal The advocates of AB 128 clearly intend that the bill not allow a disciplined officer to pursue judicial review in any form after exercising the proposed arbitration option. However, at least two circumstances or conditions undermine the finality of the arbitration step.

1. Under established legal and constitutional principles, judicial review by common-law writ of certiorari always remains available for certain basic aspects of governmental decisions if a statutory appeal process does not address them. I would expect over time to see litigation testing whether or not the proposed arbitration appeal process actually provided a sufficient breadth of appeal to abrogate entirely the right to certiorari review.

2. The text of the bill provides that the officer's appeal through arbitration would be final, but does not address the question of appeal by a complainant. Any given collective bargaining agreement implementing the bill might deal with this problem, or might not. Furthermore, because the statute gives no appeal right to a complainant, the full right to certiorari remains available for a chief, citizen, or complaining commissioner who is dissatisfied with a PFC decision, just as it does under current law; therefore, the legal right of a complainant to certiorari review

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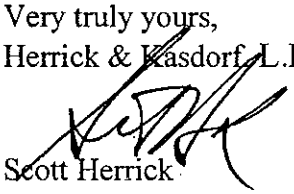
under the bill, regardless of collective bargaining agreement (to which no complainants are parties, after all), would likely be the subject of interesting litigation.

Citizen complaints The bill does not address citizen complaints. Some testimony at this week's hearing seemed to assume that citizen complaints would be governed by the collective bargaining agreement. That proposition is doubtful at best. A municipality and a union very likely do not have the capacity to limit by their contract the statutory rights of a citizen. The issue arose in a slightly different context and was addressed by the Wisconsin Supreme Court in *Durkin v. Board of Police & Fire Commissioners for the City of Madison* 180 N.W.2d 1, 48 Wis. 2d 112 (1970), which held that an agreement *by the city* not to seek discipline for illegal strike activity was indeed binding on the city *but not on citizen complainants*. I conclude that citizen complaints probably would not be directly affected by the bill. As I noted in my prepared submission, this factor would contribute to a multi-track disciplinary system in place of the current single disciplinary procedure for all complainants and all respondents. If nothing else, we would have another set of issues for interesting litigation.

Of course I would welcome an opportunity to respond to any questions on these or any other points of interest.

Very truly yours,
Herrick & Kasdorf, L.L.P.



Scott Herrick

SH/hs

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From: "Talis, John" <Talis@co.dane.wi.us>
To: "Scott Herrick" <SNH@herricklaw.net>
Date: 3/7/07 2:45PM
Subject: RE: PFC legislation AB 57

Scott:

I now have two hearings tomorrow morning, so I am not going to be able to make the hearing.

If you want to refer to the following in your testimony, or submit it on my behalf, either is fine with me:

My name is John Talis. I have been a member of the City of Madison Police & Fire Commission since approximately 2003. From 1991 to 2001 I was an attorney in private practice representing labor unions, in particular fire fighter unions. In that capacity, I litigated a number of disciplinary cases on behalf of fire fighters before a number of different police and fire commissions around the State of Wisconsin pursuant to sec. 62.13, Stats.

Throughout my time representing fire fighters in private practice, I and others representing labor had significant concerns about the fairness and impartiality of the disciplinary procedure pursuant to sec. 62.13, Stats., in that we believed police and fire commissioners develop professional relationships with chiefs through the promotional and other processes which do not exist with particular officers accused of misconduct or the involved local union presidents. This raised a question of the impartiality (or at least the appearance of impartiality) of police and fire commissions in disciplinary cases pursuant to sec. 62.13, Stats. And while my service on the Madison Police and Fire Commission has shown that commissioners are hard-working, dilligent, and make every effort to fairly decide disciplinary cases, it has not resolved my concern about the appearance of impartiality described above from the perspective of labor. There are improvements to sec. 62.13, Stats., that could and should be made to address these concerns (e.g. adding language make a mayor's nomination to the PFC subject to the approval of the local union presidents, so that affected officers have more direct input into the selection of the decisionmakers who could ultimately terminate their jobs and related benefits such as pensions).

Unfortunately, the current proposal fails to constructively address these concerns, and instead sets up a cumbersome and wholly unworkable process by which a case is heard by a PFC, but can then be appealed and tried a second time before a labor arbitrator. This proposal simply does not make sense. Why would anyone want to waste substantial time working as a volunteer PFC member on evenings and weekends when your disciplinary decisions are effectively merely advisory and subject to plenary review by a labor arbitrator anyway? And the proposed system promises to double litigation costs--including litigation costs for labor--as all parties litigate the same case twice, once before the PFC and a second time before a labor arbitrator. And does the Legislature intend to have the arbitrator's decision further reviewed pursuant to Ch. 788, Stats., as other arbitration decisions can be?

There are improvements to sec. 62.13, Stats. that should be made, but this is not one of them. If the intention is to eliminate PFCs by statute and put labor arbitrators in their place pursuant to sec. 111.70, Stats. that should be debated and decided directly on the merits rather than through the present oblique proposed statutory amendment that would have the same practical effect. This proposal should be rejected.

-----Original Message-----
From: Scott Herrick [mailto:SNH@herricklaw.net]
Sent: Monday, March 05, 2007 1:27 PM
To: Sparkman, Wesley; Talis, John; gdlowe@inxpress.net; lawton@lathropclark.com; shivabidar@tds.net
Subject: PFC legislation

STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT
COMMITTEE ON CORRECTIONS AND THE COURTS

Written Testimony of Representative Garey Bies
Assembly Committee on Corrections and the Courts
Assembly Bill 57 – Disciplinary Procedures for Law Enforcement

Fellow Committee members, I appreciate the opportunity to submit my testimony in support of Assembly Bill 57, relating to disciplinary procedures for certain local law enforcement officers and fire fighters. AB 57 is a simple proposal that allows police officers or fire fighters of cities, towns, and villages a choice of an appeal process in a disciplinary proceeding if they feel the decision of the police and fire commission hear was unfair. This bill will allow the option of appealing either to arbitration or to circuit court, an option currently available to Deputy Sheriffs.

These professionals, who every day put their lives on the line deserve this choice. The service as a police officer or firefighter is a calling only a few have answered. The quality of the people in these positions is excellent and I believe they need this protection to preserve their selfless career choices.

There will be groups that disagree and will try to paint a picture of extreme situations. The truth is there are few disciplinary cases that get to this stage. Six years ago, I asked the Wisconsin Employment Relations Commission how this law would affect arbitration requests. The Commission estimated that no more than an increase of 4 to 6 cases per year would result. Further, it was indicated that most cases that reach this point are cases in which the department involved did a poor job of investigation and preparation of the case. The better the department does in handling a disciplinary case, the less likely it will ever get to this point.

It should also be noted that passing of this legislation does not grant the arbitration option to the officers, it only allows the officers to bargain for the alternative.

The bottom line to this issue is to give the opportunity to use this appeals process to the people who, by the nature of their jobs, put their lives on the line every day when they put their uniforms and badges on. These men and women act selflessly to protect others with their own lives and never think twice upon doing so.

I respectfully request your support of AB 57 in committee. I would be happy to answer any questions that you may have. Thank you.

First for Wisconsin!

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Toll-Free: (888) 482-0001 • Rep.Bies@legis.state.wi.us

Home: 2590 Settlement Road, Sister Bay, WI 54234 • (920) 854-2811

History of Assembly Bill 57

ASSEMBLY BILL 57
An Act to amend 62.13 (5) (i) of the statutes; relating to: disciplinary procedures for certain local law enforcement officers and fire fighters. (FE)
2007

02-13. A. Introduced by Representatives Bies, Soletski, Albers, Ballweg, Friske, Gunderson, Hahn, Hines, Kerkman, Musser, Seidel, Sheridan, Townsend and Wasserman; cosponsored by Senators Hansen, Lehman, Sullivan and Wirch.

02-13. A. Read first time and referred to committee on Corrections and Courts 55

Search for another history

Legislation Back to Legislation Page

Back to Legislature Home Page

2003 AB 128 - Hg - WFA
2005 AB 185
8-1
69-25; 2
No action in Senate

MURPHY DESMOND S.C.

L A W Y E R S

MEMORANDUM

To: Chairman Garey Bies and members of the Assembly Committee on Corrections & Courts

From: Alice O'Connor, representing Wisconsin Chiefs of Police Association

Re: Opposition to AB 57 – Arbitration of Police and Fire Commission **Date:** 8 March 2007

The Wisconsin Chiefs of Police have great respect for the main author of this legislation but wish to respectfully oppose AB 57 unless it is significantly amended. AB 57, if passed in its current form, will gut more than 200 years of Police and Fire Commission disciplinary decisions for police officers charged with misconduct.

Assembly Bill 57 allows police officers and firefighters to appeal Police and Fire Commission (PFC) disciplinary decisions by seeking arbitration pursuant to a mandatory collective bargaining agreement imposed on municipalities. Currently officers can appeal a PFC decision through a circuit court proceeding.

This bill, as written, undermines a police chief's authority to deal with a bad officer, however rare the occurrence. A police chief could be put in an untenable situation of having to accept the return of a rogue police officer who has "arbitrarily" had an arbiter reverse a PFC decision. The chiefs recognize that Rep. Bies believes some "good officers" are unfairly disciplined by PFC's who he views as "too political." If that is the case, why not look at the PFC process itself or the appointment process to the PFC? Removing a system that has kept our police departments connected to the communities they serve for two centuries makes no sense.

This legislation in its current form will cripple the authority of a police chief to remove a bad officer from their Department. Police chiefs are ultimately responsible for the police officers who serve the department and their communities. This is a serious flaw in AB 57 as currently written.

The Wisconsin Chiefs of Police Association wishes to work with Rep. Bies and others to remedy problems with the current system without gutting aspects that work well in many communities. The chiefs believe Wisconsin has among the finest police officers in the country and the majority of officers never come before a PFC. However, the reality is that law enforcement officers are held to a higher standard than other city employees. When someone puts on a police uniform, they hold power, authority and public trust.

We believe more conversations are needed to find an acceptable remedy to problems Rep. Bies says exist. If need be, we recommend a Legislative Council Study Committee. A study committee could develop well thought out policy considerations that are not solved or addressed by AB 57. No policy should undermine the police chiefs overarching responsibility to the communities they serve and the officers under their supervision.

Issues that need to be addressed include:

1. What in the current system needs fixing? What and where is the problem? What works and doesn't work?

2. Is there a way to remove the "politics" from the appointment process? Should someone other than the Mayor appoint members to a PFC? If so, who? What criteria should be used to select specific members willing to serve?

4. Is there a problem with the current structure of PFC? If so, how should the structure be changed? Should the current PFC system of discipline be scrapped completely? If so, what system should be put in its place?

5. What are the cost implications to create a different kind of discipline oversight system for police officers? What would that system look like?

6. If adopted, should arbitration decisions, like PFC decisions, be required to adhere to a "community standard?"

7. What is the best, unbiased way to deal with appropriate discipline for rouge officers?

8. Under what authority should a Police Chief be able to remove a "bad" officer from his or her department?

9. Should disciplined police officers be the only group of city employees given a "second kick at the cat" outside the circuit court process? Should other city employees be given similar options?

10. Should the Attorney General's office provide more legal support for PFCs if there is adequate evidence they aren't working?

Under AB 57, the PFC's disciplinary decision and authority would become meaningless. Police chiefs authority would be undermined as well. We urge Rep. Bies and members of this committee not to move this bill forward in its current form. We also urge support for removal of the language that is currently in the Governor's proposed budget bill. Thank you in advance for your consideration.

AOC:ssf:cen
070053/Bies mm